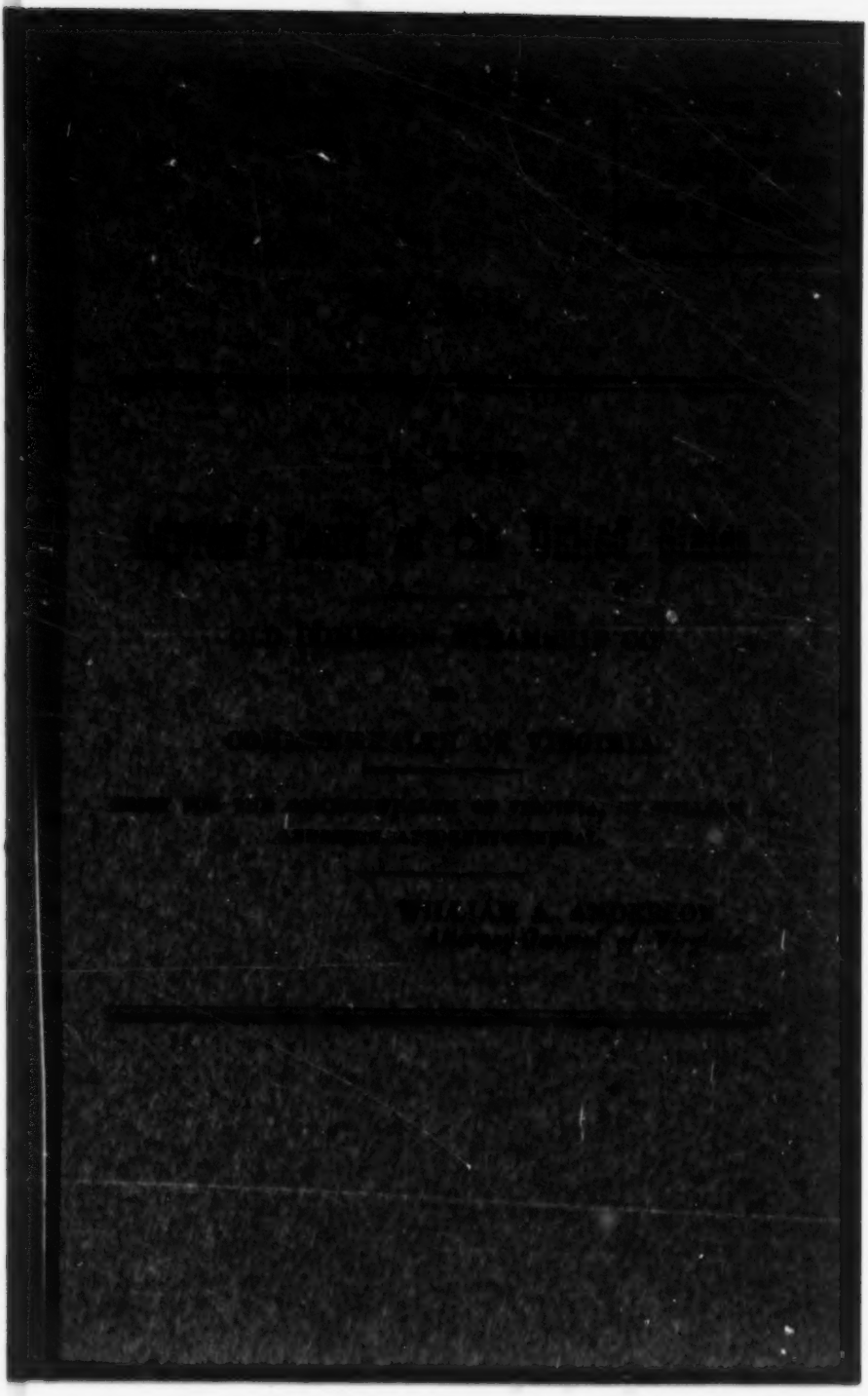


IN THE

Supreme Court of the United States.

OLD DOMINION STEAMSHIP CO.

vs.

COMMONWEALTH OF VIRGINIA.

BRIEF FOR THE COMMONWEALTH OF VIRGINIA, BY WILLIAM A. ANDERSON, ATTORNEY-GENERAL.

The question involved in this case is, whether it is competent for the State of Virginia to tax the steamboats belonging to a non-resident corporation, all of which are permanently located within her jurisdiction, and are used and ply exclusively upon "old established routes" entirely upon the tidal rivers and bays of Virginia and between ports all of which are situated in this State, but which boats have been enrolled (under the United States laws) in some port outside of Virginia, by the Delaware corporation which owns them.

These boats are:

(1) The steamer "Hampton Roads," which is used exclusively and regularly upon a route between Fort Monroe, Hampton, and Norfolk.

(2) The steamer "Mobjack," which plies regularly between the city of Norfolk and points in Mathews and Gloucester counties.

(3) The boats "Luray" and "Accomac," which run upon a regular schedule between Smithfield and Norfolk.

(4) The steamer "Virginia Dare," which runs upon an established line between Suffolk and Norfolk; and

(5) The steamers "Berkley" and "Brandon," which run upon a regular schedule up and down James river between Richmond and Norfolk.

There is no evidence that any of these steamers (except one of those used on the route between Richmond and Norfolk) was ever outside of Virginia waters.

There is no evidence that any of these steamers was ever in any port outside of Virginia.

As a matter of fact, the only ports which any of these boats ever enters are Virginia ports.

These boats are engaged entirely in transporting passengers and goods between points in Virginia, some of which traffic (and it is claimed, much the larger part of it) is ultimately destined to points beyond this State; but some of it is confined absolutely to intrastate commerce. All of them are bound to take and carry all goods or passengers destined to points within Virginia, which may be offered to them. They do not undertake to deliver a passenger, or a pound of freight, in one continuous passage to any point outside of Virginia, though they do undertake to carry passengers and freight to Norfolk and there to transfer them to an interstate line owned by the same company and transport them to a point beyond the State of Virginia—viz., the city of New York; and, in like manner, they receive from their New York and Norfolk line passengers and freight destined to points in Virginia, and they issue and sell "through" passenger fares and tickets both ways. Interstate and domestic commerce are both essentially and integrally and necessarily parts of the business of these lines, within the State of Virginia, as is the case with every Virginia transportation company which has connections, either owned by itself or by other companies, with points beyond this State.

Appellant's counsel, in the extract given in his brief from the certificate of facts, omits very material and significant portions of that certificate, which omission I deem it proper to supply

by giving the entire order of the Supreme Court of Appeals of Virginia in the case, at the end of this brief.

Under this state of facts, the State Corporation Commission considered it its duty, and entirely within the constitutional powers of Virginia, to assess this property for taxation in this State; and the Supreme Court of Appeals of Virginia has, upon appeal, affirmed the action and decision of said Commission.

I.

This seems to be a day of case law; and a number of cases have been cited and are relied upon by the counsel for the appellant in his contention that this act of the Commission was *ultra vires*. While I respectfully submit that a careful examination of these cases will show that none of them, nor all of them together, sustain the conclusions so ingeniously attempted to be derived from them by the learned counsel, still it seems to me best that this case, and all other important cases, particularly when they are of first impression in this court, should be tried, stated and decided in accordance with established principles.

The general and unquestioned doctrine is that the State has the right to tax all property, movable as well as immovable, actually located within its confines.

> "The fiction which plays so important a part in other branches of the law, that movable property has its *situs* at the domicile of the owner, has no application to the power of the State to subject all property, movable and immovable, within its limits, to taxation."

And this is the law as to tangible property, *without reference to the domicile of its owner.*

The ancient fiction of the Roman law—*mobilia sequuntur personam*—does not apply to tangible movable personal property. Indeed, it is only a fiction in reference to movables, for, as to intangible property which consists of mere rights, they

necessarily inhere in the person to whom the rights belong, and are taxable at the domicile of their owner.—*State Tax on Foreign-held Bonds*, 15 Wall., 300.

In his work on "Conflict of Laws," 7th Ed., Sec. 550, Judge Story says:

> "The general doctrine is not controverted that, although movables are for many purposes to be deemed to have no *situs* except that of the domicile of the owner; yet, this being but a legal fiction, it yields whenever it is necessary for the purpose of justice that the actual *situs* of the thing should be examined. *A nation, within whose territory any personal property is actually situate, has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there.*" (Italics mine.)

Mr. Judson, in his work on "Taxation," Sec. 393, quotes the above paragraph, and adds:

> "This principle of public law has been repeatedly declared by the Supreme Court in relation to the taxing power of the States. In *Coe* v. *Errol*, it was argued that the logs claimed to be in transit through New Hampshire were taxed to their owners in Maine as part of their general stock in trade. But the court held that this would have no influence on the decision of the question whether they were taxable in New Hampshire, saying, at page 524 (116 U. S.):
>
> "'We have no difficulty in disposing of the last condition of the question—namely, the fact, (if it be a fact) that the property was owned by persons residing in another State; for, if not exempt from taxation for other reasons, it cannot be exempt by reason of being owned by non-

> residents of the State. We take it to be a point settled beyond all contradiction or question, that a State has jurisdiction of all persons and things within its territory which do not belong to some other jurisdiction, such as the representatives of foreign governments, with their houses and effects, and property belonging to or in the use of the government of the United States. If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least affect the right of the State in which the property is situated to tax it also. It it hardly necessary to cite authorities on a point so elementary.'"

No proof is necessary to demonstrate the absolute accuracy of this statement of this proposition, which merely formulates one of the essential attributes of sovereignty.—*I. Cooley Taxation*, page 22 (3rd Ed.).

The only limitation upon this power in the States is that it shall not be so exercised as to hinder or interfere with interstate or international commerce. The tax, therefore, cannot be levied upon *the business* of interstate commerce, but it can be levied upon *property* used in interstate commerce, upon the *vehicles* of commerce, though these may be used in transportation of persons and goods destined to or from points without the State.

A tax on ships does not violate the commerce clause of the Federal Constitution. The only question is whether they are properly within the jurisdiction of the State levying the tax. If they are, the right of the State to tax them is unquestioned.—*Ravennel* v. *Charleston*, 4 Rich. L., 286.

It is competent for a State to levy a tax on steamboats plying exclusively in its own waters, owned by its own citizens, although enrolled and licensed as coasting vessels, under the

laws of the United States.—*Lott* v. *Mobile Trade Co.*, 43 Ala., 578.

The State may tax such vessels, although they are used in interstate commerce. Such a tax is not a burden upon, or a regulation of, commerce among the States.—*Perry* v. *Torrence* (Ohio), 32 Am. Dec., 725.

A State may tax sleeping-cars used upon a railroad within the State, although they are owned by a foreign corporation and are employed in interstate commerce.—*Denver & Rio Grande R. R. Co.* v. *Church*, 17 Col., 1.

Railroad cars, engaged in interstate commerce, though owned and used by a foreign company, may be taxed by the State in which they are so used.—*Pullman Palace Car Co.* v. *Pennsylvania*, 141 U. S., 18 (L. Ed. 35, p. 613); *Same* v. *Hayward*, 141 U. S., 36 (35 L. Ed., 621).

> "For the purposes of taxation, as has been repeatedly affirmed by this court, personal property may be separated from its owner, and may be taxed on its account at the place where it is, although not the place of his own domicile, and even if he is not a citizen or resident of the State which imposes the tax."—(Mr. Justice Gray, delivering the opinion of the court in *Pullman Palace Car Co.* v. *Pennsylvania*, 141 U. S., 18,—35 L. Ed., 616).
>
> "It is equally well settled that there is nothing in the Constitution or laws of the United States which prevents a State from taxing personal property, employed in interstate or foreign commerce, like other personal property within its jurisdiction."—(*Ibid*, the learned judge, citing a number of cases in support of both propositions.)

And in *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 218 (29 L. Ed., 166-167), in which the main question presented in this case was adjudicated as to an interstate line of ferry boats plying, not between ports of the same State, but between

ports in different States, engaged exclusively in interstate commerce, and therefore not so strong a case for the power of taxation as the one at bar, Mr. Justice Field, delivering the unanimous opinion of the court, says:

> "Still the fact remains that such a ferry is a means—and a necessary means—of commercial intercourse between the States bordering on their dividing waters, and it must, therefore, be conducted without the imposition by the States of taxes or other burdens *upon the commerce between them.* Freedom from such imposition does not, of course, imply exemption from reasonable charges as compensation for the carriage of persons, in the way of tolls or fares, *or from the ordinary taxation to which other property is subjected, any more than like freedom of transportation on land implies such exemption.*" (Italics mine.)

The Supreme Court of the United States thus expressly held in that case that vehicles of transportation upon water, though engaged in interstate commerce, were liable to a property tax to the same extent and in the same manner that vehicles used in transportation upon land were rightfully and lawfully subjected to such a property tax—thus bringing cases involving the taxation of vessels, plying upon intra-state lines, distinctly within the numerous decisions of that court as to railroad cars and other like vehicles situated within a State, and used in interstate commerce therein, but owned by some non-resident corporation.

II.

I will now briefly notice the grounds upon which it is claimed by appellant's counsel that its steamboats in this State are taken out of the operation of the above well-established principles and positive adjudications of the State courts cited, and of the Su-

preme Court of the United States (as well in the cases cited, as in a number of cases reviewed or referred to in the Federal cases I mention).

1. The first alleged ground of immunity from taxation at the actual *situs* of the property is, that these boats are engaged mainly in interstate commerce, and only incidentally, or to a lesser extent, in intra-state traffic.

As to this contention, I observe, first, that it is impossible that it can be true that the intra-state business of these lines is purely "incidental." Under the law, and in the very nature of things, the domestic business which they carry or which is offered to them, is an integral and necessary part of their traffic, which they cannot decline to take, and which, it is admitted, they do carry whenever it is offered.

It is, perhaps, unfortunate that there seems to have been no evidence before the State Corporation Commission as to the extent of the intra-state business of these lines. It would be passing strange if it did not constitute a very large percentage of the aggregate business—particularly as to the passenger traffic—upon all of the lines, and, as to the freight traffic, upon the lines plying between Norfolk and Suffolk, Norfolk and Smithfield, Norfolk and Hampton and Old Point Comfort, and Norfolk and Mobjack Bay and the estuaries of that bay in Mathews and Gloucester counties.

It has been repeatedly held by the Supreme Court of the United States that vehicles of commerce, employed exclusively in interstate commerce, may be taxed in the State where they are located and regularly used.—*Pullman Palace Car Co.* v. *Hayward*, 141 U. S., 36 (35 L. Ed., 621).

And in the *Gloucester Ferry* case, it was adjudged, in the unanimous opinion of the court, that—

> "It is true that the property of corporations engaged in foreign or interstate commerce, as well as the property of corporations engaged in other business, is subject to taxation, provided always it be within the jurisdiction of the State."—114 U. S., 206 (29 L. Ed., 163).

And as we have already seen, that decision was rendered as to a company whose business was wholly interstate.

2. Another ground relied upon is, that the owner of this property is a non-resident corporation.

As was decided in the *Pullman Car* cases cited above, and in a number of cases re-affirmed in those decisions, the fact that the owner of vehicles of commerce within a State is not a citizen or resident of that State, has nothing to do with the power of a State to tax such property. The only question is, whether the property is permanently, or transiently and temporarily, within the jurisdiction of the State.

3. Another ground, and the principal reliance of appellant's counsel, is that these vessels are enrolled under sections 4312 *et seq.* of United States Revised Statutes, at their home port, and the port nearest the residence of their owner, as vessels engaged in coastwise trade with the United States.

The record fails to disclose *where* these vessels are enrolled.

If they are properly enrolled, their enrollment is presumably either in some port of Delaware, the State of Appellant's domicile, or in New York, if that is the place of residence of its president and general manager (R. 10); and that may be technically the "home port" of these vessels, although it may be, and doubtless is, true that none of them ever was or ever will be in the port of New York, or ever will be outside of the land-locked waters of Virginia where they are all permanently located and regularly engaged, day after day and year after year, in plying exclusively between Virginia ports, never for an instant going outside of her territorial boundaries and rightful jurisdiction.

In such case, the *artificial* will yield to the *actual situs*, and the latter will determine the just and the legal *locus* of the property for taxation.

These views are fully sustained by the following adjudications:

In the case of *Northwestern Lumber Company* v. *Chehalis County*, 64 Pac. Rep., 909, the question arose as to the exemption of ocean-going tugboats from taxation by the State of

Washington, in whose waters they were exclusively employed, by reason of the fact that they were registered and assessed and paid taxes at the port of San Francisco, in the State of California, where their owner resided.

It was held, in an opinion which will be found of interest in connection with the questions in this case, that the registry was merely *prima facie* evidence of the *situs* of the vessels for taxation, and that, as they were permanently employed in the State of Washington, they were properly and legally taxable in that State. The recent cases are reviewed in the opinion of the court in that case, and its perusal will be found profitable.

And so, in *National Dredging Co.* v. *State*, 99 Ala., 462, the common-sense conclusion was reached that—

> "The question, indeed, is at last one of *situs* in fact; and, where this is shown, neither foreign registry nor foreign ownership is of any consequence."

The precise question arose in *Norfolk & Western Railway Co.* v. *Board of Public Works*, 97 Va., 23, where it was decided that tugs and barges, owned by the railway company, regularly enrolled in the city of Philadelphia, but permanently or indefinitely engaged in plying Virginia waters near Norfolk, are legally taxable in Virginia, notwithstanding their enrollment in another State.

And in *Minturn et als.* v. *Hays*, 2 Cal., 590, it was held that a steamboat, whose owners resided in New York, *where it was taxed*, but which was regularly engaged in running upon the navigable waters of California, between San Francisco and Sacramento, was legally taxable in California.

And, finally, after careful consideration, the Supreme Court of Appeals of Virginia, in this very case, in the order copied at the end of this brief, held that these vessels were liable to taxation in Virginia, the jurisdiction of their actual domicile.

The case of *Johnson* v. *De Barry Baya Merchant Line*, 37 Fla., 499 (37 L. R. A., 518), relied upon for the appellant, was a case in which the State of Florida undertook to tax vessels

which were from time to time engaged in commerce in New York, the State of their home port and their owner's residence, and were not permanently, but *transiently*, within Florida waters; said vessels were "duly registered" and "regularly returned for assessment and taxation at their home port"; and it was held that they were not liable to taxation in Florida.

The statement of the case distinguishes it from the case at bar. A "tramp" steamer would not be liable to taxation in a State where it was transiently employed, even if such employment were for a considerable period, provided only it was transient.

It must acquire an actual domicile within a State, to be subject to its jurisdiction for purposes of taxation. But it was not held in that case that the registry of such vessels was conclusive as to their legal *situs* for taxation, but merely that they were primarily and "presumptively" taxable only "at the port of registration," which in that case was in fact also their *bona fide* home port.

III.

Whatever may be the purpose of such enrollment—however innocent it may be in this case—to sanction it for the purpose of granting immunity from taxation would be to throw down the bars and fling wide open the doors to fraudulent devices for such purposes.

If, as is contended by the appellant, the ownership by a non-resident corporation, and enrollment at the pleasure of such corporation in a port of another State, would operate to give boats the actual and permanent *situs* of which was in Virginia, exemption from taxation by this Commonwealth, then it will be only necessary for all the owners of such water craft, plying in the waters of this State, to obtain a charter from Maine, New Jersey, or Delaware, or some other of the States that have shown such an accommodating disposition in the matter of granting charters to companies to carry on business beyond their borders, and then to have such boats enrolled in some port outside of Virginia, and to claim that they are protected by

the provisions of Secs. 4312 *et seq.*, U. S. Rev. Stat., or by the commerce clause of the Federal Constitution.

The courts have not held, and I am unwilling to believe that they will ever hold, that such an artificial and fictitious *situs* ought to control; or ought to be or will be allowed to relieve such property from its due contribution to the support of the government of the State where it is actually located, by whose laws it is protected, and whose ports and waters it uses in the business of its owners, and from whose people it is earning money for its non-resident proprietors.

Any such inequitable rule would offer such a premium to evasions of the character I have indicated, that it would not be long before all of the vessels engaged in intra-state commerce—but all of which are, to a greater or less extent, necessarily engaged in interstate commerce—upon the waters of Virginia, would be found to be owned by Delaware, or New Jersey corporations.

The meaning, the effect, the *rationale* of the various decisions of the Federal courts upon this subject, including those relied upon by the learned counsel for the appellant, are clearly stated in more than one decision of the United States Supreme Court, but very concisely expressed in the opinion of Mr. Justice Gray, already quoted from, in the *Pullman Palace Car* case, 141 U. S., 18 (35 L. Ed., 616), as follows:

> "Ships or vessels, indeed, engaged in interstate or foreign commerce upon the high seas or other waters which are a common highway, and having their home port, at which they are registered under the laws of the United States at the domicile of their owners in one State, are not subject to taxation in another State at whose ports they incidentally and temporarily touch for the purpose of delivering or receiving passengers or freight. But that is because they are not, in any proper sense, abiding within its limits, and have no continuous presence or actual *situs* within its jurisdiction, and, therefore, can be taxed

only at their legal *situs,* their home port and the domicile of their owners"—citing a number of cases to the same effect.

It requires no argument to show that this case comes within neither the terms nor the reason of the law as here so satisfactorily expressed.

There are a number of more or less material facts bearing upon the merits of this case, as to which I regret that the record is either silent or is incomplete.

Among them is, the nature and extent of the intra-state business done by these vessels. Some of them, particularly those plying between Norfolk and Hampton and Old Point Comfort, Norfolk and Smithfield, and Norfolk and Suffolk, are very little more than ferry boats running regularly between neighboring points in Virginia, and necessarily carrying a very large proportion of local traffic, both passengers and freight, to and from Newport News and Norfolk, which are getting to be not only places of large consumption, but of large distribution also, and places to which Virginians resort for shopping, for business, and for pleasure.

Nor does it appear what sort of connections are made between these lines, particularly that plying from Richmond, and the interstate line between Norfolk and New York; nor whether the chief part of the passenger business on all of these lines is not intra-state business.

Nor does it appear what is the character of these vessels; whether they are built for ocean navigation; whether they would not be swamped in almost any ordinary storm that beats upon the Atlantic coast, and which they would necessarily encounter in any regular coastwise service; whether, in fact, they were not all built expressly for the service they are now rendering in Virginia waters; nor does it appear that these vessels have been taxed, or, indeed, are taxable, in New York or Delaware; none of which, however, are matters of real moment in respect to the main question presented in this case.

IV.

To briefly recapitulate: The grounds relied upon by counsel for appellant seem to be:

(1) That these vessels are owned by a non-resident of Virginia. That is an immaterial circumstance. The permanent *locus* of the *property*, and not the *residence* of its *owner*, determines its *situs* for taxation.

> *State Tax on Foreign-held Bonds*, 15 Wall., 319;
> *Pullman Palace Car Co* v. *Pennsylvania*, 141 U. S., 18;
> *Transit Co.* v. *Lynch*, 177 U. S., 152.

(2) That these vessels are engaged in interstate commerce. That, also, according to the repeated adjudications of this court, fails to give to the *instruments and vehicles*, which carry such traffic between the States, immunity from taxation by the State in whose jurisdiction such vehicles have their actual *situs*.

> *Pullman Palace Car Co.* v. *Pennsylvania*, 141 U. S., 30;
> *Adams Express Co.* v. *Ohio State Auditor*, 165 U. S., 194.
> *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S., 185;
> *American Refrigerator Transit Co.* v. *Hall*, 174 U. S., 70;
> *Union Refrigerator Transit Co.* v. *Lynch*, 177 U. S., 152.

(3) And lastly and chiefly, the learned counsel claims that these vessels, although habitually, continously and permanently within the jurisdiction of Virginia, and regularly engaged in carrying interstate and intra-state commerce, exclusively between Virginia ports, are immune from taxation in Virginia because their Delaware owner has had them enrolled in New York, or Delaware, or somewhere outside of Virginia.

This is really the only question in the case. Although this question has been decided by the highest courts of several of the States, where it has arisen, in favor of the validity of the tax, it does not seem to have ever been *directly* adjudicated by this court; yet the reason and principles of the decisions by this court as to the liability of personal property generally, and particularly as to the liability of the vehicles of commerce upon land, to taxation by the State in whose jurisdiction they are actually located, fully sustain the legality and the rightfulness of the taxation of these vessels by Virginia.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.

April, 1905.

APPENDIX.

VIRGINIA:

In the Supreme Court of Appeals, at Richmond, March 17, 1904.

OLD DOMINION STEAMSHIP COMPANY, Appellant,
vs.
COMMONWEALTH OF VIRGINIA, Appellee.

Upon appeal from a finding of the State Corporation Commission, entered on the —— day of November, 1903, declaring the steamers Mobjack, Accomac, Hampton Roads, Luray, Virginia Dare, Brandon, and Berkley, and the steam tug Germania and seven barges, property of appellant, taxable under the laws of the State of Virginia, and imposing a property tax thereon for the year 1903.

The facts presented by the transcript of the record of the finding aforesaid are as follows:

That the Old Dominion Steamship Company was a non-resident corporation, having been incorporated by the Senate and House of Representatives of the State of Delaware; that it was then and had been for many years theretofore engaged in the transportation of passengers and freight on the Atlantic ocean and communicating navigable waters, between the city of New York, in the State of New York, and Norfolk, and certain other ports within the State of Virginia. That said steamship company, in the prosecution of its said transportation business, owned and operated the vessel property above named; that these vessels, with the exception of the tug Germania, whose movements and use will be hereinafter stated, visited various ports or points within the State of Virginia, for the purpose of receiving freight and passengers, for which they issued bills of lading and tickets to points outside the State of Virginia; that owing to the shallow waters where these vessels plied it was impossible

in most instances for the larger ocean-going steamers of the company to be used; that in consequence the vessels above numerated were used to receive the freight and passengers as aforesaid, giving the shipper of freight a bill of lading for the same destined to New York and other points outside of Virginia, and the passenger a ticket to his destination, and thus transported such freight and passengers to deeper water at Norfolk and Old Point Comfort where, upon such bills of lading and tickets, the passengers and freight were transferred to one of the larger ocean-going vessels of the steamship company, and so the ultimate destination—namely, New York and elsewhere outside of Virginia—was reached; that any other business transacted by the above-named vessels was incidental in character and comparatively insignificant in amount; that the said vessels were built and designed for interstate traffic especially, and were adjuncts to or branches of the main line of the Old Dominion Steamship Company between New York and Norfolk; that each and all of the said vessels were regularly enrolled, under the United States laws, outside of the State of Virginia with the name and port of such enrollment painted on the stern of each of them; that the said vessels, though regularly enrolled and licensed for coastwise trade, were then used on old established routes upon navigable waters within Virginia, as follows, to-wit:

First. The steamer Hampton Roads between Fort Monroe and Hampton and Norfolk.

Second. The steamer Mobjack between points in Mathews and Gloucester counties and Norfolk.

Third. The steamers Luray and Accomac between Smithfield and Norfolk.

Fourth. The steamer Virginia Dare between Suffolk and Norfolk.

Fifth. The steamers Berkeley and Brandon between Richmond and Norfolk; and

The steamers Berkeley and Brandon ply between Richmond and Norfolk. These two steamers were completed in the year 1901 or early in 1902, one of them having been constructed at the William R. Trigg ship yard, in the city of Richmond, and the other outside of the State of Virginia. Early in the year 1902, they were placed upon the line between Norfolk and Richmond, one steamer leaving Richmond each evening and arriving in Norfolk each morning, thus giving a night trip every night each way between Richmond and Norfolk. At the time these steamers were placed upon this route and since that time, the Old Dominion Steamship Company has by public advertisement called attention to the fact that these two steamers were especially fitted in the matter of state-room accommodations for carrying passengers between Richmond and Norfolk, and the said two steamers have since that time been advertising for the carriage of passengers and freight on their route between Richmond and Norfolk, and have been regularly carrying freight and passengers between the said two points in Virginia as well as taking on freight and passengers for further transportation on their ocean steamers at Norfolk. The Old Dominion Steamship Company applied under the revenue laws of the State of Virginia for a license to sell liquor at retail on each of these steamers, and on July 1st, 1902, there was granted through the Commissioner of the Revenue of the city of Richmond a license to the Old Dominion Steamship Company for the sale of liquor at retail on each of these steamers, said licenses to expire on April 30th, 1903. On or about the same time, the said steamship company complied with the revenue laws of the United States and paid the necessary revenue tax through the custom-house at the city of Richmond for the purpose of selling liquor at retail on each of these steamers. In the spring of 1903, the said steamship company, in order to obtain licenses to sell liquor at retail on each of these steamers, applied for the same in the city of Richmond and complied with the requirements of section 143 of the new revenue law, approved April 16th, 1903, and so obtained licenses for the year 1903-1904 to sell liquor at retail on each of these steamers on their route between the city of Richmond and Norfolk, and likewise, on or about the

same time, complied with the revenue laws of the United States in the matter of selling liquor at retail on each of the said steamers on said route.

Sixth. The steam tug Germania, which was used in the harbor of Norfolk and Hampton Roads for the purpose of docking the large ocean-going steamers of the Old Dominion Steamship Company and the transferring from different points in those waters freight from connecting lines destined to points outside of Virginia.

And the court, having maturely considered said transcript of the record of the finding aforesaid and the arguments of counsel, is of opinion that the legal *situs* of the vessels and barges assessed for taxation by the finding of the State Corporation Commission is, for that purpose, within the jurisdiction of the State of Virginia, and that said property is amenable to the tax imposed thereon—notwithstanding the fact that said vessels and barges are owned by a non-resident corporation, that they may have been enrolled under the act of Congress at some port outside the State of Virginia, and that they are engaged, in part, in interstate commerce—and doth so decide and declare. Therefore, it seems to the court here that the finding of the State Corporation Commission appealed from is without error, and said finding is approved and affirmed. It is further considered by the court that the appellee recover against the appellant thirty dollars damages and its costs by it about its defence expended upon this appeal.

All of which is ordered to be entered upon the order book here, and certified to the State Corporation Commission, to be entered of record in its order book there, as required by law.